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Attorneys for Defendants Roman Catholic
Archdiocese of Newark (i.p.a. "Archdiocese of
Newark"), St. Theresa's R.C. Church (i.p.a. "St.
Theresa School"), Joseph W. Cardinal Tobin (i.p.a.
"Cardinal Joseph Tobin"), Rev. Msgr. Thomas P.
Nydegger, V.G. (i.p.a. "Msgr. Nydegger"), Dr.
Margaret Dames, James Goodness, Father Joseph
Bejgrowicz, Deacon Joseph Caporaso (i.p.a.
"Joseph Caporoso"), Sister Helene Godin, Richard
Donovan, and Anh Bui

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

SCOTT PHILLIPS, AS GUARDIAN AD
LITEM, ON BEHALF OF S.P., B.P. and K.P.
and SCOTT PHILLIPS,

Plaintiff,

v.

ARCHDIOCESE OF NEWARK, et al.,

Defendants.

Civil Action No. 2:18-cv-12207 (MCA) (LDW)

**DECLARATION OF
BRIAN H. FENLON, ESQ.
IN SUPPORT OF CHURCH
DEFENDANTS' MOTION FOR
PARTIAL SUMMARY JUDGMENT**

BRIAN H. FENLON, ESQ., of full age and upon his oath declares as follows:

1. I am an attorney of the State of New Jersey and am a member of the firm of Carella, Byrne, Cecchi, Olstein, Brody & Agnello, P.C., attorneys for Defendants Roman Catholic Archdiocese of Newark (i.p.a. "Archdiocese of Newark"), St. Theresa School ("STS"), St. Theresa

R.C. Church (i.p.a. “St. Theresa School”), Joseph W. Cardinal Tobin (i.p.a. “Cardinal Joseph Tobin”), Rev. Msgr. Thomas P. Nydegger, V.G. (i.p.a. “Msgr. Nydegger”), Dr. Margaret Dames, James Goodness, Father Joseph Bejgrowicz, Deacon Joseph Caporaso (i.p.a. “Joseph Caporaso”), Sister Helene Godin, Richard Donovan, and Anh Bui (collectively the “Church Defendants”) in the captioned action.

2. I submit this Declaration in support of the Church Defendants’ Motion for Partial Summary Judgment filed pursuant to Fed. R. Civ. P. 12(b)(6) and 56(a-f), and L. Civ. R. 56.1(a), seeking the dismissal with prejudice of the pertinent portion of Count One of the Complaint filed by Plaintiffs Scott Phillips, individually and as guardian ad litem for his children S.P., B.P. and K.P.

3. Annexed hereto as Exhibit A is a true copy of the Plaintiffs’ Complaint (which was removed to this Court by the Church Defendants).

4. While the Complaint’s R. 4:5-1 Certification referenced “an appeal under Docket No. A-004687-17”, it failed to fully disclose to the Court that: the Plaintiffs’ sued the Church Defendants in a prior New Jersey state court action, Scott Phillips, as guardian ad litem, on behalf of S.P. and B.P. v. Archdiocese of Newark, St. Theresa School, John Does 1-100, John Doe John Corporations 1-5, Superior Court of New Jersey, Chancery Division, Docket No. ESX-C-248-16 (the “Superior Court Action”); said matter was tried to a plenary evidentiary hearing before the Hon. Donald A. Kessler, J.S.C.; Judge Kessler rendered an oral opinion on August 14, 2017 ruling in favor of the Church Defendants on all claims tried; and Plaintiffs appealed the Trial Court’s final dismissal of said action to the Superior Court of New Jersey, Appellate Division, where it is still pending.

5. Annexed hereto as Exhibit B is a true copy of the Transcript of Judge Kessler’s August 14, 2017 Plenary Hearing Opinion in the Superior Court Action.

6. Annexed hereto as Exhibit C are true copies of the Certificate of Incorporation for Defendant Roman Catholic Archdiocese of Newark (the “Archdiocese”), dated October 16, 1908 (filed in the Essex County Clerk’s Office on or about October 17, 1908), and the Certificate of Change of Name to Roman Catholic Archdiocese of Newark dated on or about March 31, 1981 (filed in the Essex County Clerk’s Office on or about April 19, 1981).

7. Annexed hereto as Exhibit D is a true copy of the Certificate of Incorporation of St. Theresa’s R.C Church of Kenilworth, New Jersey dated July 9, 1945 (filed in the Union County Clerk’s Office on July 17, 1945).

8. Annexed hereto as Exhibit E is a true copy of the Archdiocese’s answers to the Plaintiffs’ five (5) interrogatories addressed to the issue of its receipt of any federal funds/federal financial assistance.

9. Annexed hereto as Exhibit F is a true copy of St. Theresa School’s answers to the Plaintiffs’ five (5) interrogatories addressed to the issue of its receipt of any federal funds/federal financial assistance.

10. Annexed hereto as Exhibit G is a true copy of the U.S. Department of Education’s Answers to “ONPE General Issues Frequently Asked Questions Related to Nonpublic Schools”, as downloaded and printed by me from the Department’s Office of Innovation and Improvement website (Question 9 therein and the Department’s answer to it were quoted by STS in its answers to Plaintiffs’ Interrogatories).

I hereby declare under penalty of perjury that the foregoing statements are true and accurate.

Dated: February 21, 2020

By: /s/ Brian H. Fenlon
BRIAN H. FENLON

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